



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CRIMINAL CASE NO. 03 OF 2007**

**REPUBLIC.....RESPONDENT**

**VERSUS**

**FREDRICK KIPKOECH SEREM alias FREDRICK KANDAGOR.....ACCUSED**

**RULING**

The accused in this case was charged on 13<sup>th</sup> March, 2007 with an offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of the offence are that on the night of 24<sup>th</sup> September, 2006 at Koyumkaa bar, within Kapsoo trading centre, Kapropita location, in Baringo District of the Rift Valley province, the accused murdered *John Kibet Bello*.

The accused trial has a long history of over 11 years. The first witness gave evidence on 27<sup>th</sup> February, 2008 and on that day it proceeded impressively well as 5 witnesses in total gave evidence before the late *Justice Kaburu Bauni*. However, from that day it was adjourned several times till 20<sup>th</sup> February 2012 when the 6<sup>th</sup> witness gave evidence before *Justice F. Azangalala*. Adjournments followed till 20<sup>th</sup> March, 2013 when *Justice Ngenye Macharia* directed it starts De Novo. Adjournments continued till 23<sup>rd</sup> October, 2014 when the issue of *Section 200(3)* of the *Criminal Procedure Code* was revisited before *Justice C.W Githua* and a fresh order to start the case De Novo made. After several other adjournments, the De Novo hearing commenced on 11<sup>th</sup> December, 2015. The prosecution called four witnesses before they were forced to close their case after persistent failure to avail the rest.

Their case is on 24<sup>th</sup> September, 2006 PW-3 was working as a waiter in a bar owned by PW-4 called Koyumkaa. The deceased and his wife who is PW-2 in this case were in the said bar from 4 p.m. They are the parents of PW-4, the owner. PW-1 visited a neighbouring bar, owned by *Michael*, where he picked a quarrel with the accused person. The accused threatened to assault him and he went to report him at Kabarnet police station. When he returned back to *Michael's* bar he was told by *Michael* that the accused went there armed with a panga and was looking for him. PW-1 ordered for a soda. The accused got into the pub but at the time he had no panga. PW-1 asked him why he was looking for him while armed with a panga. The accused said he had no problem with him and he was going to fetch for napier grass. PW-1 said he had made a report to the police but that was an issue as they could discuss and settle later. The accused then left. PW-1 left 10 minutes thereafter and found outside the accused quarelling with the deceased and two of his brothers. They were pushing each other towards *Michael's* bar.

At about 8.00 p.m the accused went to *Michael's* Bar and made trouble. He was cutting iron sheets on the roof, doors and metre box of the said bar with a panga. PW-3 went there and witnessed the incident. He returned to Koyumkaa bar and told the deceased, his wife (PW-2) and another called *Robert Kandie* that they should go home. Before PW-3 closed the bar the accused got therein armed with a panga. He cut one table and the bar's counter door. He then left. At about 10.30 p.m, PW3 left the bar together with *Kandie*. PW-2 and the deceased were left therein. PW-2 went outside to a toilet to answer to a call of nature. When she returned back to the bar she saw the accused leaving. He was carrying the bucket in which the bar sale proceeds were kept. He was as well armed with a knife. The knife was held in hands. She knew the accused for many years as a neighbor and the bar had electric lights. She noted that the deceased was lying down bleeding from a stab wound on his left side. She started screaming. She realized that the deceased, her husband, was already dead. She rushed out and went to report the incident to *Andrew*, her brother in-law.

The following morning PW-1 was told of the murder by *Pascal Bello*. He went to the trading centre. He found many people and they went looking for the accused. He was got and led to the trading centre where there was a big crowd. People wanted to lynch him but police safeguarded him.

On 29<sup>th</sup> September, 2006 at around 5 p.m PW-4 and PW-1 accompanied a police officer to Kabarnet District hospital where they identified the deceased's body for post mortem. In weighing as to whether the foregoing evidence establishes a prima facie case warranting the accused be placed on his defence, I have considered that though the evidence suggest it is the accused who stabbed the deceased, the post mortem report was not produced to show the cause of his death. We therefore do not know the actual cause of the deceased's death. As such an important ingredient for the offence of murder was not established at the closure of the prosecution case. If the accused was to be placed on his defence and opts to remain mute, the available evidence cannot lead to his conviction. The prosecution therefore have failed to establish a prima facie case against him and he is accordingly acquitted of the offence under *Section 210* of the *Criminal Procedure Code*.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 25<sup>th</sup> day of October 2018.**

In the presence of:-

1. The accused
2. Ms. Kagali - prosecutor
3. Mr. Mwelem- Court Assistant